

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH WILLIAM HENNEMANN,

Defendant and Appellant.

2d Crim. No. B154956  
(Super. Ct. No. 2001019479)  
(Ventura County)

Keith William Hennemann appeals a judgment of conviction by guilty plea to second-degree burglary, with an admission of a prior serious felony conviction. (Pen. Code, §§ 459, 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) We affirm and conclude that the trial court did not abuse its discretion by refusing to strike the prior conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

FACTS

According to the probation report prepared for sentencing, three witnesses saw Hennemann enter an unlocked Volvo automobile on Katherine Street in Simi Valley. Hennemann took an umbrella and a pair of gloves. He then entered a detached garage in an adjacent residence and took a mountain bicycle. Hennemann told his friends about the thefts and they informed police officers.

The following day, police officers saw Hennemann and another person appear to be "getting ready to fight." Officers questioned Hennemann who admitted that he took the umbrella, gloves, and bicycle. He explained to officers that he took the umbrella because it might rain and that he took the bicycle to flee persons who might hurt him.

Approximately seven weeks later, a probation officer interviewed Hennemann. He admitted that he was on probation but had not reported to his probation officer. Hennemann stated that he entered the Katherine Street garage to escape gang members who were chasing him. He added that he took the bicycle as transportation, the umbrella to use as a weapon, and the gloves to avoid leaving fingerprints. Hennemann preferred state prison rather than probation because probation was "too strict and unrealistic."

Hennemann pleaded guilty to second-degree burglary and admitted suffering a prior serious felony conviction for residential burglary. He requested the trial court to strike the prior felony conviction under Penal Code section 1385, subdivision (a), and *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 497, reasoning that he is mentally ill and his criminal history consists of property and drug crimes. The trial judge denied the motion, stating only that it was not "appropriate to grant the [] motion." The trial court sentenced Hennemann to a prison term of 32 months (low term of 16 months, doubled).

Hennemann contends that the trial court's decision to deny the *Romero* motion is unreasonable and an abuse of discretion.

## DISCUSSION

Hennemann asserts that the trial court abused its discretion because he is mentally ill and his prior crimes were non-violent property crimes. He contends that the prior felony conviction, a burglary of a relative's home, was an unsophisticated and petty crime. Hennemann argues that the trial court did not properly consider the nature and circumstances of the present and prior offenses or his background and character. (*People v. Williams* (1998) 17 Cal.4th 148, 161 [discussion of factors to guide trial court in

exercising discretion under Pen. Code, § 1385 and *Romero*].) He points out that the present crime involved taking property of little value during daylight, with witnesses present. A punishment of 32 months' imprisonment, he argues, is disproportionate to the offense. (*People v. Williams, supra*, 17 Cal.4th 148, 160 [sentencing under Three Strikes law must consider balance of defendant's constitutional rights against disproportionate punishment and society's interest in prosecution of properly charged crimes].)

Hennemann also asserts that his case was unusual and would warrant a grant of probation, absent the prior felony conviction. He adds that the owner of the Volvo automobile believes that he deserves leniency.

We review rulings upon motions to strike prior felony convictions under a deferential abuse of discretion standard. (*People v. Williams, supra*, 17 Cal.4th 148, 162; *People v. Myers* (1999) 69 Cal.App.4th 305, 309-310.) Appellant bears the burden of establishing that the trial court's decision is unreasonable or arbitrary. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives]; *People v. Myers, supra*, 69 Cal.App.4th 305, 309-310.) We do not substitute our decision for that of the trial court. (*People v. Myers, supra*, 69 Cal.App.4th 305, 310.) "It is not enough to show that reasonable people might disagree about whether to strike one or more of [defendant's] prior convictions." (*Ibid.*)

The trial court did not abuse its discretion. Hennemann has suffered 14 prior criminal convictions over an 8-year period. Two convictions were felony convictions – residential burglary and possession of weapons or explosives. Hennemann also suffered five misdemeanor drug convictions, either for being under the influence of a controlled substance or possessing it. Other misdemeanor convictions include unlawful sexual intercourse with a minor, disorderly conduct, and receipt of stolen property.

Hennemann received a grant of probation for the receipt of stolen property conviction. He did not report to his probation officer, however, and stated that probation was "too strict and unrealistic." He also stated that he preferred a state prison sentence to

probation in order that he might eventually return to his "homies" in San Fernando. Hennemann is an admitted street gang member whose moniker is "Wicked."

The probation report states that prior probation reports indicate that Hennemann suffers from bipolar disorder, possible schizophrenia, and uncontrollable rage. He was committed to a state hospital and has attended anger management counseling. Henneman also admitted that he consumes a considerable amount of alcohol daily.

Hennemann has a lengthy record of property and drug crimes and a history of drug and alcohol abuse in addition to possible mental illness. He also has not complied with a previous grant of probation. Hennemann has not established that the trial court abused its discretion. (*People v. Williams, supra*, 17 Cal.4th 148, 161 [court must consider whether circumstances indicate defendant is outside the spirit of the Three Strikes law].)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Clark, Judge  
Superior Court County of Ventura

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Meghan B. Clark, under appointment by the Court of Appeal, for  
Defendant and Appellant.

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